

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 13, 2009
POSITION: Neutral, note concerns
SPONSOR: California Council of Land Trusts

BILL NUMBER: SB 555
AUTHOR: C. Kehoe

BILL SUMMARY: Eminent Domain Law: Conservation Easement

The California Constitution authorizes private property to be taken for public use only when just compensation is paid. The Eminent Domain Law prescribes how this constitutionally authorized power may be exercised and permits that exercise only for a public use.

This bill would revise the Eminent Domain Law to prohibit a person from acquiring a conservation easement by eminent domain, unless specified procedures are followed.

FISCAL SUMMARY

The Department of Transportation (Caltrans) advises that this bill would result in a significant, but as yet unspecified, fiscal impact to the department resulting from increased costs associated with notice requirements, potential litigation costs, and project delivery delays. Caltrans also advises that it may be required to pay more to obtain properties with conservation easements because the bill would specify how fair market value be calculated for these properties, resulting in increased project costs.

This bill would have no fiscal impact to state conservancies because they only deal with willing sellers.

The proposed procedures would not result in a reimbursable state mandate because in the *City of Merced v. State of California* (1984) the court ruled that the power of eminent domain is discretionary and not state mandated. The court also ruled that any related activities resulting from a local entity's discretion to exercise its power also is not a state mandate, and therefore not reimbursable.

COMMENTS

We are neutral on this bill because it could create a more thorough review process whenever properties subject to conservation easements are targeted for condemnation under eminent domain law. However, we are concerned that the bill would create delays in project delivery and increase costs associated with acquiring land subject to a conservation easement.

Existing law allows properties to be acquired for public uses by eminent domain if property owners are compensated at fair market value and certain conditions are met. This bill would require:

- Compensation for the acquisition of a property subject to a conservation easement shall be at fair market value of the property, as if it were not encumbered by the easement.
- The person seeking to acquire a conservation easement by eminent domain to give the holder of the easement notice and an opportunity to comment on the acquisition.
- The holder of a conservation easement to provide notice of the proposed acquisition to each public entity that helped fund the purchase of the easement or approved a project with the easement as a condition on approval.

(Continued)

Analyst/Principal (0633) M. Almy	Date	Program Budget Manager Karen Finn	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

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COMMENTS (continued)

- A notice of a hearing on the resolution of necessity to be sent to any holder of the conservation easement or related public entities to inform their right to appear and be heard on matters relating to the acquisition and planned public use.

The bill would allow the holder of the conservation easement and any public entity that provided funds for the purchase of the easement to provide the person seeking to acquire the property with written comments on the proposed acquisition, including identifying any potential conflict between the proposed public use and the terms of the easement.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	Code
2660/Caltrans	SO	No	-----	See Fiscal Summary				-----	0042
3125/Tahoe Consvr	SO	No	-----	No/Minor Fiscal Impact				-----	0140
3640/Wildlife	SO	No	-----	No/Minor Fiscal Impact				-----	0447
3760/Coast Consvr	SO	No	-----	No/Minor Fiscal Impact				-----	0565
8885/Comm St Mndt	SO	No	-----	No/Minor Fiscal Impact				-----	0001

<u>Fund Code</u>	<u>Title</u>
0001	General Fund
0042	Highway Account, State, STF
0140	Environmental License Plate Fund, Calif
0447	Wildlife Restoration Fund
0565	Coastal Conservancy Fund, State